

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM SELTZER,)
Plaintiff,)
v.) No. 4:07CV1446 RWS
MISSOURI PUBLIC DEFENDERS)
OF THE 22ND JUDICIAL CIRCUIT,)
and J. MARTY ROBINSON,)
Defendants.)

MEMORANDUM AND ORDER

Plaintiff has filed a motion to proceed in forma pauperis and a motion for temporary restraining order. Under 28 U.S.C. § 1915(e), a case must be dismissed, at any time, if the Court determines that it is frivolous, malicious, or fails to state a claim upon which relief can be granted. The Court has reviewed this case and will dismiss it as frivolous.

Plaintiff brings this suit against the Missouri public defenders assigned to the City of St. Louis and J. Marty Robinson, Director of the Missouri Public Defender System. Plaintiff alleges that the Missouri public defenders are overworked and cannot adequately represent their clients in court. Plaintiff claims that the public defenders are aware that they are not functioning effectively as is required by the Sixth Amendment but that they willfully disregard both their clients' constitutional

rights and the duty of loyalty that they owe their clients. Plaintiff alleges that the public defenders knowingly give their clients incorrect advice and that they refuse to timely investigate their clients' cases. Plaintiff seeks an order barring the public defenders from accepting any more clients until their workloads decrease to a level that would allow them to fulfill their duties under the Constitution.

To be liable under 42 U.S.C. § 1983 for alleged civil rights violations, a defendant must be acting under color of state law. However, public defenders "do[] not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." Polk County v. Dodson, 454 U.S. 312, 325 (1981). As a result, the complaint is frivolous and shall be dismissed. 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's complaint is **DISMISSED**, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that all pending motions are denied as moot.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 16th day of August, 2007.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE